

Appl. No. 10/085,793

Amendment dated November 30, 2004

Reply to Non-Final Office Action September 14, 2004

AMENDMENTS TO THE DRAWINGS:

Proposed amended drawing sheets 1-6 are attached.

REMARKS

The Office Action

The drawings were objected to under 37 C.F.R. § 1.83(a). Amended drawings are enclosed herewith. The specification has been amended to make reference to numerals shown in the amended drawings. It is submitted that no new matter has been added.

Claims 10-12 were rejected under 35 U.S.C. §112, first paragraph, for failing to comply with a written description requirement. The Examiner asserts that the limitations "the object portion is partially separable from the backing card to receive the product therebetween," "a strip connected to the first end," and "a handle and strip is configured to depict the handle of the object" were not described in the specification in such a way as to convey to one skilled in the art at the time the application was filed that the inventors had possession of the claimed invention.

Claims 10-12 stand rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement.

Claims 1-12 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Specifically, in claim 1 "visually simulates the object" was considered to be vague and indefinite. Moreover, the phrase "the object portion cooperates with the product to secure the product to the backing card" was considered vague, inaccurate and indefinite. In claim 12, the Examiner considered it was not clear how the object portion depicts the object. In claim 12, the

limitation of "the strip" was considered to have insufficient antecedent basis.

Claims 1-4 were rejected under 35 U.S.C. §102(b) as being anticipated by Hsi-Chang (U.S. Patent No. 5,915,564).

Claims 1-2, 4, 5, and 10 were rejected under 35 U.S.C. §102(b) as being anticipated by Hart (U.S. Patent No. 5,477,964).

Claims 1-2, 4, 5, and 8-12 stand rejected under 35 U.S.C. §102(b) as being anticipated by Berry (U.S. Patent No. 2,973,091).

Claims 1-4 and 8-12 stand rejected under 35 U.S.C. §102(b) as being anticipated by Roshdy (U.S. Patent No. 5,375,717).

Claim 6 stands rejected under U.S.C. §103(a) as being unpatentable over either Berry or Roshdy in view of Hansen (U.S. Patent 5,884,456).

Claim 7 was rejected under 35 U.S.C. §103(a) as being unpatentable over either Berry or Roshdy.

For the reasons outlined below, it is submitted that the claims distinguish over the references.

The present application relates to a packaging or display device for packaging or displaying a product that in use secures an object. The display device comprises a backing card including an object portion that visually simulates the object. As can be seen from FIGURE 1, various objects are visually simulated, such as keys, razors, and the like.

Claim 1 has been amended and now recites a packaging or display device for packaging or displaying an associated product that in use secures a separate object. The display device includes a backing card. The backing card includes an object portion that visually simulates the separate object by depicting a portion of the separate object. The object portion and the backing card are a single piece of material. The object portion cooperates with the product to secure the product to the backing card and to visually simulate the product securing the separate object when the product is used.

Support for the amendments to claim 1 are to be found at page 3, second and third paragraphs (the object is separate); in US Patent No. 5,554,396 incorporated in the specification by reference at page 3, paragraph 4, (the product illustrated in US Patent No. 5,554,396 is clearly separate from the backing card but is associated therewith when packaged/displayed by the backing card, as illustrated in FIGURE 1 of the present application); page 5, paragraph 5 (visual simulation by depiction of the object by the object portion by an outline of the object and/or graphic image); and page 6, paragraph 3, FIGURE 3 (where the portion is a handle of a razor, but not the head of the razor); and FIGURE 2, where the portion is a pen).

The Examiner asserts that it is not clear what is meant by visual simulation of an object. The word "simulate" means "to have the appearance, sound, or form of," "to imitate," or "to make a pretense of." (Webster's II New College Dictionary, 1995). Thus, the claimed object portion imitates or makes a pretense of a separate object, such as a pen or other item to be secured by the product. "Visual" means "serving, caused by, or relating to the sense of sight." Thus, visual simulation of a separate object

implies imitation or making a pretense of a separate object which serves the sense of sight. The object portion is not, itself, the object which is to be secured by the product. This is clear from the exemplary pen as an object portion, which, being formed from cardboard, plastic, or other planar material from which the backing card is made, does not function as a pen. Rather, the object portion serves to help the customer to visually recognize the type of object with which the product may be used.

Applicants consider that the term "visual simulation" is clear in and of itself to describe the object portion but have nonetheless added the language "by depicting a portion of the separate object." The word "depict" means "to picture," or "to represent as a picture or sculpture." For example, the depiction can include an outline or a graphic image of the object.

The Examiner further considers that the phrase "the object portion cooperates with the product to secure the product to the backing card" is vague, inaccurate and indefinite. The Examiner further asserts that it is not clear what structure is encompassed by such language or what structure is the object portion and how the object portion is related to the product and the product to the backing card. The object portion, as presently claimed, visually simulates a separate object, such as a pen or razor, by depicting at least a portion of that object, for example, by its outline and/or a graphical representation of the separate object. The object portion and the backing card comprise a single piece of material. The associated product can be for example, a holder which is displayed or packaged by the display device and which, in normal use, secures the separate object. As can be seen from FIGURE 2, the product, which is described in greater detail in the above-mentioned US Patent No. 5,554,396, is positioned on the backing

card. The object portion, a die cut in the shape of a pen, has ends attached to the backing card. The product is thus gripped between the backing card and the object portion, i.e., secured to the backing card. Moreover, the jaws of the product are positioned adjacent a mid portion of the object portion, to simulate the jaws gripping the object in use. Accordingly, it is respectfully requested that the \$112, second paragraph rejections be withdrawn.

The references of record do not disclose a packaging or display device as presently claimed. The Examiner cites Hsi-Chang, Hart, Berry, and Roshdy against claim 1. However, the Examiner fails to identify the object to be secured by the asserted products. If it is assumed that the Examiner interprets "object" to mean the devices actually held by the various display devices shown in these references (which would usually be referred to as products), the object portions which the Examiner identifies do not simulate the separate objects which the alleged product is intended to secure.

Hsi-Chang discloses a folded cardboard article for packaging spurs. The Examiner points to portion 12 of the backing card of Hsi-Chang. This does not constitute a product, but rather a portion of the cardboard carton. The Examiner points to vertical slots 38 of Hsi-Chang as comprising an object portion, but these slots do not simulate a separate object to be secured by a product (which the Examiner considers to be top portion 12). Nor do the slots 38 of Hsi-Chang visually simulate the spurs either in their outline or in graphical representation. No customer viewing the cardboard article of Hsi-Chang would recognize the slots as imitating spurs. Rather, the slots simply receive the spurs therein.

Nor are the slots 38 of Hsi-Chang formed from the same material as the rest of Hsi-Chang's carton. Rather, they are not formed from any material at all, other than air.

Hart discloses a package for an associated tool, such as a screwdriver. The Examiner points to tab 18 of Hart as comprising an object portion. However, Hart's tab simply receives the screwdriver therein and does not simulate an object to be secured by a product (which the Examiner considers is shown by a second tab 22). Further, the tab 18 does not cooperate with tab 22 to secure tab 22 to a backing card, as asserted by the Examiner. Moreover, since the tabs 18, 22 actually secure the screwdriver (which Applicant assumes Examiner considers to be the object), they cannot be considered to simulate securing the screwdriver.

Berry discloses a holster carton for a toy revolver. The Examiner points to openings 16, 17, and 24 of Berry as constituting an object portion. However, as for the slots of Hsi-Chang these slots are not formed from the same material as the rest of the panel 15, but are formed of no material whatsoever, other than air. The flaps 18, 19, and 20 do not depict an object (presumed to be the revolver in the Examiner's interpretation) to be secured by a product. No customer, looking at these flaps would recognize that they represent a revolver. Moreover, to the extent that the flaps 19, 20 actually secure the revolver, they cannot be considered to simulate securing a revolver.

Roshdy discloses a foldable package for an endoscope component. The Examiner points to the flap 124 of Roshdy as simulating an object portion. However, the flap does not simulate the endoscope. A customer looking at flap 124 would not assume that it represents an endoscope component. Moreover, the flap 124

actually holds the endoscope, which Applicant presumes the Examiner considers to be the object. Since the flap actually holds the endoscope in cooperation with extension portion 103, it cannot be considered to simulate an endoscope being held by a product.

Hansen, which is cited only against claim 6, fails to supply the deficiencies of the primary references of Berry or Roshdy. There is no suggestion in Hansen of an object portion that visually simulates a separate object by depicting a portion of the separate object and an object portion backing card which are a single piece of material. Accordingly, it is submitted that claim 1, and claims 2-9 dependent therefrom, distinguish over the references of record.

Claim 10 recites a packaging or display device for packaging or displaying an associated product that in use secures an object. The device includes a backing card and an object portion that depicts the object. The object portion and the backing card comprise a single planar piece of material. The object portion and the backing card receive a portion of the product therebetween. The object portion cooperates with the product to selectively secure the product to the backing card and to simulate the product securing the object when the product is used.

The Examiner asserts that there is no support in the specification for the product being received between the object portion and the backing. However, as clearly seen from the photographs submitted with the application, the shadowing around the object portion is a clear indication that the object portion is raised from the surrounding backing and that the product, a holder, is between the die cut portion of the object portion and the adjacent backing. Accordingly, it is requested that the \$112 first and second paragraph rejections be withdrawn.



The references of record do not disclose a device as claimed in claim 10. The Examiner cites Hart, Berry, and Roshdy against claim 10 but fails to identify the object to be secured by the asserted products. If it is assumed that the Examiner interprets "object" to mean the devices actually held by the various display devices shown in these references (which are usually referred to as products), the components which the Examiner identifies as object portions do not simulate the separate objects which the alleged product is intended to secure.

The Examiner points to tab 18 of Hart as comprising an object portion and second tab 22 as a product. The tab 18 and the backing card of Hart do not receive a portion of the second tab 22 therebetween. Rather, the two tabs are spaced from each other. Nor does tab 18 simulate an object to be secured by tab 22. Rather, the tabs 18, 22 actually secure the screwdriver (which applicant assumes Examiner considers to be the object). They cannot, therefore, be considered to simulate securing a screwdriver.

The Examiner points to openings 16, 17, and 24 of Berry as constituting an object portion, but these slots are not formed from a planar material. Rather, they are formed of no material whatsoever, other than air. The flaps 18, 19, and 20 do not depict an object (presumed to be the revolver in the Examiner's interpretation) to be secured by a product. Moreover, to the extent that the flaps 19, 20 actually secure the revolver, they cannot be considered to simulate securing a revolver.

The Examiner points to the flap 124 of Roshdy as simulating an object portion. However, the flap does not simulate the endoscope. Moreover, the flap 124 actually holds the endoscope, which Applicant presumes the Examiner considers to be the object. Since

the flap actually holds the endoscope in cooperation with extension portion 103, it cannot be considered to simulate an endoscope being held by a product. Further Roshdy's flap 124 does not cooperate with the sheet 100 to receive a portion of a product therebetween. Rather, the forward extension portion 103 or Roshdy, which the Examiner asserts is a product, is well spaced from the flap 124.

Accordingly, it is submitted that claim 10, and claims 11-12 dependent therefrom distinguish over the references of record.

#### Drawing Objections

The drawings are objected to for failure to show "the object portion being die-cut to provide an outline of the object," "a pair of jaws," graphic images that depict the object" and "the object portion being embellished with at least a portion of a graphic image of the object."

Applicant has amended Figures 1-5 by incorporating reference numerals for each of the elements shown and described in the specification. The first full paragraph on page 3 is amended to reference the numerals.

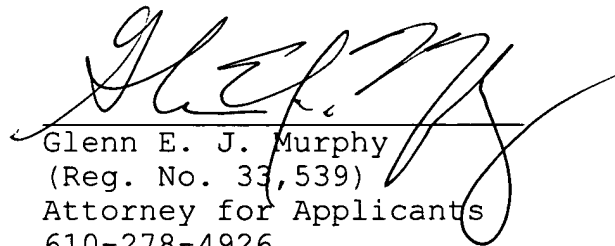
New Figure 6 is added, which corresponds to FIGURE 2 of above-mentioned US Patent No. 5,554,396, incorporated by reference. A new paragraph is added to page 4 which describes Figure 6. Support for this paragraph is to be found in claim 3 and in US Patent No. 5,554,396, col. 3, lines 31-36. A second new paragraph on page 4 adds a description of the object portion shown in Figures 1-5.

Accordingly, it is respectfully requested that the drawing objections be withdrawn.

CONCLUSION

In view of the amendments and remarks above, Applicants ask for reconsideration and allowance of all pending claims. Should any fees be due for entry and consideration of this Amendment that have not been accounted for, the Commissioner is authorized to charge them to Deposit Account No. 01-1250.

Respectfully submitted,

  
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